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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/019,544

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Peter Steffen Ebert

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06/25/2008

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EXAMINER

KESACK, DANIEL

ART UNIT

PAPER NUMBER

3691

MAIL DATE

DELIVERY MODE

06/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/019,544

Applicant(s)

EBERT, PETER STEFFEN

Examiner

Daniel Kesack

Art Unit

3691

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 14-33 and 40-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 14-33 and 40-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 25, 2008 has been entered.

Status of Claims

2. Claims 1-7, 14-33, 40-46 are currently pending. The rejections are as stated below.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-4, 14-17, 21-23, 27-30, and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaffee, U.S. Patent No. 7,165,044. in view of Applicant's admitted prior art, and further in view of Khayat et al., U.S. Patent No. 6,327,571.

Claims 1, 4, 14, 21, 27, 40, Chaffee teaches an investment portfolio tracking system and method comprising:

sending a first and second electronic request to a data provider, directly from a user, the requests specifying a business and an industry, respectively (column 12 lines 8-31) and receiving information electronically from the data provider relating to the general performance of the specified business in relation to the specified industry (figure 13).

Chaffee fails to teach the specified business information includes a business ratio value, an industry lower quartile value, an industry median value and an industry upper quartile value.

As cited in the previous office action (Final Action dated 1/9/2008), Applicant discloses these features of the invention substantially as claimed in Applicant's Description of Related Art section of the specification. Specifically, Applicant discloses that accessing information relating to general performance of a business, and the performance of an industry, wherein the information includes industry lower quartile value, industry median value, and an industry upper value, processing said information, and displaying said information was known at the time of Applicant's invention (Applicant's specification, paragraphs 3 and 4). Furthermore, Applicant discloses the "business ratios" are known in the art of benchmarking. Benchmarking is inherently a comparison of actual performance to a standard, and therefore it was known at the time of Applicant's invention to compare the business performance of a business to the rest of the industry, using said "business ratios." Finally, Applicant also discloses that loading the information into a spreadsheet was known at the time of Applicant's invention (paragraph 4). It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Chaffee to include these values because Chaffee is concerned with comparing the performance of a business to an industry, and Applicant's comparison techniques were known at the time of invention. Furthermore, the results of retrieving these values and ratios for the business and industry input, were predictable.

Chaffee and Applicant fail to disclose creating a display based on information loaded into the database application, including in the display the lower quartile value,

the median value, and the upper quartile value of the industry wherein the business ratio value is indicated in relation to the industry, And one reference demarcation regarding a performance of the specified business in relation to the specified industry.

Khayat discloses a system and method for displaying business data in order to compare the performance of one business with the averages of other businesses, including a display of upper quartile, lower quartile, and median of outside businesses (figure 3), and further including a display of a reference demarcation regarding the performance of the business in relation to the outside businesses (figure 4). Khayat further teaches that the invention is not limited to use with any particular type of information processing system, and the techniques are suitable for use with a wide variety of other systems. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Chaffee and Applicant's admitted prior art to include displaying the data in the way the business data is displayed according to Khayat because it is desirable that data be displayed in a comprehensive format for maximum digestibility. One of ordinary skill in the art would look to any area involved in displaying data for comparison purposes, and even more specifically for displaying performance data of businesses, in order to display the data from financial data providers, when retrieving comparison data in the way described by Chaffee.

Claims 2, 3, 15, 16, 22, 23, 28, 29, 41, 42, Chaffee, Applicant, and Khayat fail to teach the particulars of forming the display based on the information.

Official Notice is taken that graphing median, upper quartile, and lower quartile values in the form of a boxplot, and marking points on a line to compare values is old and well known in the art. The limitations of the claims are the mental steps which would be obvious to perform in creating a boxplot, and plotting a point on the line. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Chaffee, Khayat, and Applicant's specification to include a boxplot because benchmarking is a comparison of values, and a boxplot compares the same values as the display in Khayat, and plotting a point over a boxplot would be the optimal way to compare a value to a median, upper, and lower quartile value.

Claims 4, 17, 30, 43, Chaffee, Applicant, and Khayat fail to teach what the business ratios are.

Official Notice is taken that business ratios being quick ratios, current ratios, return on assets, and return on equity, are old and well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Chafee, Applicant, and Khayat to include these values as business ratios because these values are known to be a good representation of how a company is performing financially, and the use of these numbers would produce predictable results.

6. Claims 5-7, 18-20, 24-26, 31-33, and 44-46, are rejected under 35 U.S.C. 103(a) as being unpatentable over Chaffee, Khayat, and Applicant's specification as applied to claims 1, 14, 21, 27, and 40 above, and further in view of Conley Jr., U.S. Patent No 5,999,193.

Chaffee, Khayat, and Applicant's specification fail to teach specifics of the coloring of the visual display.

Conley Jr. teaches a reference demarcation indicating the relation of the business to the industry, the demarcation including different colors or shading depending on where the business metric lies in relation to the industry metrics (figures 2, 6). It would be an obvious next step to include different demarcations depending on the relationship of the business metric to the median, upper quartile, and lower quartile values, as displayed according to Chaffee, Khayat, and Applicant's specification. Examiner notes that while Conley Jr. does not explicitly teach a plus and a minus sign, this limitation is regarded as design choice, and it would be obvious to use any color, symbol, or pattern. It would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to modify the teachings of Chaffee, Khayat, and Applicant's specification to include the coloring as described by Conley Jr. because Conley Jr. teaches the invention enables a user to quickly and accurately interpret and review data represented by the visual objects in the chart, as well as a company's performance relative to an industry standard (abstract), which is the area with which Chaffee, Khayat, and Applicant's admitted prior art are all concerned.

Response to Arguments

7. Applicant's arguments with respect to claims 1-46 have been considered but are moot in view of the new grounds of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Kesack whose telephone number is (571)272-5882. The examiner can normally be reached on M-F, 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Respectfully Submitted,

Daniel Kesack
June 15, 2008
/D. K./
Examiner, Art Unit 3691

/Hani M. Kazimi/
Primary Examiner, Art Unit 3691